INFORMATION TECHNOLOGY INDUSTRY COUNCIL

DOCKET FILE COPY ORIGINAL

September 3, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: ET 95-19 -- Request by Information Technology Industry Council for Reconsideration

Dear Mr. Caton:

I am enclosing an original and ten copies of the Information Technology Industry Council's (ITI) request for reconsideration in ET Docket No. 95-19, "Amendment of Parts 2 and 15 of the Commission's Rules to Deregulate the Equipment Authorization Requirements for Digital Devices."

Sincerely,

Fiona J. Branton

Fiona J. Branton
Director, Government Relations and
Regulatory Counsel
Information Technology Industry Council

Enclosures

Before the

Federal Communications Commission

Washington, DC 20554

In the Matter of	)	
	)	
Amendment of Parts 2, 15, 18 and	)	
Other parts of the Commission's	)	
Rules to Simplify and Streamline	)	ET Docket No. 95-19
the Equipment Authorization	)	
Process for Radio Frequency	)	
Equipment	)	

PETITION OF THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL FOR RECONSIDERATION

The Information Technology Industry Council ("ITI")[1] hereby petitions the Commission for reconsideration of certain of its decisions in the Memorandum Opinion and Order ("the Order") in ET Docket No. 95-19. Specifically, ITI believes that the Commission's action in the Order regarding the treatment of foreign testing laboratories for purposes of the Declaration of Conformity (DoC) process for equipment authorization did not sufficiently correct harms caused by the Commission's rules in this area--rules first established in 1996 in the rulemaking proceeding under ET Docket No. 95-19.[2]

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[1] ITI represents the leading U.S. providers of information technology products and services. Its members had worldwide revenue of $405 billion in 1996. They employ more than 1.5 million people in the United States.

[2] The Memorandum Opinion and Order (the "Order") denies ITI's petition of July 19, 1996 under ET Docket No. 95-19 for certain

ITI requests reconsideration of the Commission's requirement that overseas laboratories performing tests under the Declaration of Conformity procedure be located in countries that provide equitable access to U.S. testing laboratories. The Commission's "trade fairness" requirement, rather than inspiring reciprocity, has provoked retaliation on the part of U.S. trading partners. It has harmed U.S.-based manufacturers without enhancing protection of the U.S. radio spectrum in any way. Moreover, this requirement is fundamentally inappropriate, because it has nothing to do with the Commission's statutory regulatory responsibility for protecting users of the electromagnetic spectrum from harmful interference. On the contrary, the requirement is a U.S. trade policy requirement which clearly is outside the Commission's responsibility.

I. ITI OPPOSES THE COMMISSION'S "TRADE FAIRNESS" REQUIREMENT FOR OVERSEAS TESTING LABORATORIES

ITI fundamentally opposes the Commission's requirement, contained in the Note to Section 2.948(d), stating that accreditations of testing labs outside the United States will not be recognized by the Commission (i.e., the Commission will not accept tests performed by such labs for purposes of the Declaration of Conformity procedure) unless either:

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changes in the rules. The Commission's decision on ITI's earlier petition is closed, and ITI does not wish to raise the same issues in the present petition. Instead, the present petition focuses on new issues raised in the Order.

(a) there exists a mutual recognition agreement between the U.S. and the foreign administration that permits U.S. facilities to test products marketed in the foreign country, or

(b) the Commission determines, in consultation with the U.S. Trade Representative and other Executive Branch agencies, that the respective foreign countries "accept U.S. accreditations and do not impose additional barriers upon U.S. companies."

The latter alternative, (b), was stated informally in the Commission's Public Notice of July 16, 1996, "OET Takes Steps to Encourage Self-Declaration for Computer Compliance." The Order formally incorporates the provisions of this Public Notice into the rules. However, this change does not materially alter the conditions to which ITI objects, because it continues to impose the fundamentally inappropriate trade fairness criterion.

II. THE TRADE FAIRNESS REQUIREMENT HAS HARMED U.S. MANUFACTURERS

Information technology (IT) is a global industry. Many U.S. manufacturers have design, testing, and production facilities throughout the world. The choice of where to perform electromagnetic compatibility testing in a globally distributed manufacturing enterprise is properly a business decision, to be made on criteria of economic efficiency. Provided that the testing laboratory is competent to perform the test, its geographic location should not be a matter of concern to the Commission.

The trade fairness requirement has created substantial

burdens on U.S. based manufacturers, such as many ITI members, that utilize overseas facilities for manufacturing and testing. This is particularly true for companies using European laboratories, because the Commission has determined, in consultation with other federal agencies, that the European Union discriminates against U.S. companies with respect to testing. (This conclusion about the European Union requirements is substantially incorrect, as we discuss below.) As a result, U.S. companies who perform part of their manufacturing and testing in overseas facilities have been forced to ship products to U.S.-accredited, U.S.-based laboratories for compliance testing even though they have been tested in overseas facilities that meet ISO/IEC Guide 25 guidelines and could be, or have been, accredited by U.S. accrediting bodies (such as the Department of Commerce's National Voluntary Laboratory Accreditation Program, NVLAP) or equivalent foreign accrediting bodies.

III. GLOBAL TRADE FAIRNESS IS NOT AN APPROPRIATE CRITERION FOR COMMISSION POLICY

With this rule, the Commission has expanded its authority inappropriately, beyond simply protecting the electromagnetic spectrum to that of defining parameters for global trade. As stated in the Order, the Commission's rule is intended to ensure equal market access of U.S. testing laboratories overseas. ITI notes that the Order does not claim any relationship between this requirement and the protection of the U.S. electromagnetic spectrum.

ITI certainly has concerns about market access in foreign markets; however, ITI believes that the Commission is not the appropriate agency to address these concerns. Overseas market access concerns are best pursued by other agencies with the statutory responsibility for international trade policy. We offer several examples of the pitfalls of Commission involvement in developing trade policy:

1. The Commission erred in its assessment of the European Union as presenting significant barriers to U.S. IT products with respect to electromagnetic compatibility testing. In the Order, the Commission has identified an example of unequal treatment regarding European "competent bodies." While it is true that the European Commission does not recognize U.S. certification authorities as competent bodies, the Order fails to acknowledge that the vast majority of products do not have to be certified by a European "competent body" in order to be marketed in Europe. In the European Union (EU), a valid Suppliers Declaration of Conformity for a product that complies with designated European Norms (including the international electromagnetic interference standard used by both the Commission and the EU, International Special Committee on Electromagnetic Interference (CISPR) 22), can be based on testing performed by laboratories located anywhere in the world. Only products that do not comply with the designated European Norms--such as open board testing instruments--are required by the EU to be certified by European competent bodies. Product types under the scope of the Commission's Declaration of Conformity process generally do not require submittal to competent

bodies for market access in Europe.

Almost all IT products comply with CISPR 22 and their manufacturers enjoy complete freedom to select test laboratories in any country in the world, accredited or not, with subsequent access to the European market. Therefore, the Commission erred in citing this minor exception in its conclusion that the EU does not meet the "trade fairness" criterion. ITI believes that this example illustrates the fundamental impracticability of the Commission's trade fairness requirement.

2. In the Order, the Commission states that accreditation by the National Association of Testing Laboratories Australia (NATA) is a requirement for laboratories to test products for compliance with Australian electromagnetic interference requirements. However, under the Australian procedures, lab accreditation is not a requirement. A manufacturer or importer can have testing done at any lab in the world of his or her choosing, recognizing that in the case of a dispute, test data from a NATA accredited lab takes precedence. As in the previous example, this illustrates the complexity and impracticability of the trade fairness requirement.

3. The Commission's trade fairness requirement has not gone unnoticed by other trading partners and has provoked retaliation, increasing barriers to IT products. As anticipated by ITI in its earlier comments in ET Docket 95-19,[3] several foreign administrations have imposed reciprocal restrictions on the use of

[3] ITI comments of July 19, 1996 under ET Docket No. 95-19.

U.S. test facilities in response to the Commission's limitations on the use of overseas facilities. For example, a U.S.-tested product cannot be marketed in at least one Asian country without being retested by a laboratory accredited by that country's accrediting body. This creates a barrier to imports into that country. Our expectation is that other countries will follow the Commission's lead, resulting in redundant and costly lab accreditations which were not previously required.

IV. REMOVING THE TRADE FAIRNESS RULE WILL HELP THE COMMISSION BY ENCOURAGING MORE COMPANIES TO USE THE DECLARATION OF CONFORMITY OPTION

In recent months, Commission staff have stated both publicly and privately their hope that more companies will begin using the Declaration of Conformity option instead of the Certification option, because the former option places less administrative burden on the Commission's staff. ITI members enthusiastically support the Commission's goal of streamlining the authorization process and thereby using its own staff resources more efficiently. However, until the trade fairness rule is removed and the Commission begins accepting testing data from all competent laboratories regardless of location, firms that rely on testing labs in Europe and other locations excluded under the rule may be reluctant to change to the Declaration of Conformity option and therefore will likely continue to use the Certification option.

V. ITI OPPOSES THE COMMISSION'S RESTRICTIONS ON ITS ACCEPTANCE OF ACCREDITATIONS PERFORMED BY NON-U.S. ACCREDITORS

The Commission accepts test results, for purposes of the Declaration of Conformity procedure, from laboratories located anywhere in the world if those labs are accredited by U.S. accreditors such as NVLAP (except as modified by the trade fairness requirement). However, the Commission does not recognize accreditations performed by non-U.S. accreditors on the same basis. Specifically, the Order states in Appendix B, Section 2.948 (d)(2) that the Commission will accept accreditations performed by non-U.S. accreditors only with respect to laboratories located in the same country as the non-U.S. accreditor.

This restriction, like the trade fairness requirement, unnecessarily limits manufacturers' choice of laboratories to perform tests to be submitted to the Commission under the Declaration of Conformity process. Because IT products and systems typically are assembled from components originating in many nations, this restriction significantly affects the operation of the competitive international market for laboratory accreditation services with respect to IT testing. By eliminating direct competition between accreditors in different countries, the restriction reduces incentives for accreditors to provide manufacturers and other operators of testing laboratories with efficient, high-quality accreditation services. For these reasons, and because no clear rationale for the restriction is stated in the Order, ITI requests that the Commission recognize

accreditations performed by non-U.S. accreditors regardless of the location of the accredited laboratory, as is already the case with respect to accreditations performed by U.S. accreditors.

VI. CONCLUSIONS

ITI supports the Commission's goal of streamlining the equipment authorization process while ensuring continued protection of the electromagnetic spectrum from interference. However, ITI strongly opposes the Commission's inappropriate efforts to set U.S. trade policy. The Commission should revise its rules to remove requirements which have harmed U.S. manufacturers and which, as stated explicitly in the Order, are motivated solely by trade concerns. Specifically, (1) the Commission should accept testing data for product approval under the Declaration of Conformity procedure from accredited, competent laboratories wherever they are located; and (2) the Commission should recognize laboratory accreditations performed by U.S. or non-U.S. accreditors, regardless of whether the accreditor and the laboratory it accredits are located in the same country.

Respectfully submitted,

Information Technology Industry Council

By:

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September 3, 1997